BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JESSE A. JONES)

For Appellant: Gary Appel
Attorney at. Law

For Respondent: Jacqueline W. Martins
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jesse A. Jones against a proposed assessment of additional personal income tax in the amount of $1,650.24 for the year 1975.

The issue presented is whether appellant is entitled to a business loss deduction for funds advanced to his son in 1975.

Appellant, a veterinarian, claimed a $15,000 business loss deduction on his 1975 income tax return. According to appellant, the loss was incurred in connection with a business venture he entered with his son.

Appellant's son and one Thomas Young formed a partnership known as "Garage Two" to enter the business of renting storage facilities to the public. In November 1974, appellant's son bought out his partner; thereafter, Garage Two was a sole proprietorship. Appellant was not a formal partner in Garage Two. However, he claims that he and his son orally agreed on May 15, 1974 that appellant would supply the cash needed by the business in exchange for one-half of his son's share of the profits. Appellant contributed no cash at the time of this alleged oral agreement. In June 1974, Garage Two leased land upon which the storage facilities were to be built. Shortly after the execution of the lease, it was discovered that the applicable zoning laws prohibited the intended use. As a result, the business venture was abandoned in January 1975. The lessor of the property sued appellant's son on the lease and ultimately obtained a $25,000 judgment against him. On July 11, 1975, appellant transferred $15,000 to his son. Appellant asserts that this money was paid pursuant to the oral agreement and was to be used to pay Garage Two's business expenses.

Upon audit, respondent determined that appellant had not proven that he was entitled to the claimed loss deduction and disallowed it. Subsequent to appellant's protest, respondentaffirmed its proposed assessment. This timely appeal was then filed.

Revenue and Taxation Code section, 17205 allows an individual to deduct losses not compensated for by insurance if the losses were incurred in a trade or business; incurred in connection with a transaction entered into for profit; OK resulted from a casualty. The taxpayer has the burden of proving that he is entitled to the claimed deduction. (Appeal of Ruth Wertheim Smith, Cal. St. Rd. of Equal., Oct.. 17, 1973.) Deductions arising from intrafamily transactions are subject to particularly rigid scrutiny. (Appeal of Arthur and Kate C. Heimann, Cal. St. Bd. of Equal., Feb. 26, 1963.) Although appellant has proved that he advanced $15,000 to his son and that his son incurred

business expenses in connection with the Garage Two business venture, that is not sufficient to entitle appellant to deduct the $15,000 as a business loss. The voluntary payment of the debts of another does not entitle a taxpayer to a loss deduction. (Appeal of Myron .. and Daisy I. Miller, Cal. St. Bd. of Equal., June 28, 1979.)

Appellant asserts that he and his son entered into a business agreement in May 1974. However, there is no written evidence of any such agreement, and no evidence that appellant had any involvement in the Garage Two business venture. In addition, appellant advanced no money until six months after the abandonment of the venture. This fact seems to indicate that appellant was merely attempting to help his son pay the expenses of an unsuccessful business, in particular, the expenses of defending the lawsuit filed against him, and that appellant was not investing in a business with the expectation of making a profit. The only evidence presented by appellant in support of the existence of an oral agreement are statements by himself and his son. We have frequently held that a taxpayer's own assertions do not meet his burden of proof. (Appeal of Harry P. and Florence O. Warner, Cal. St. Bd. of Equal., April 22, 1975.) The statement by appellant's son is not sufficient to prove the alleged oral agreement in view of his family ties to appellant, the lack of supporting evidence, and the timing of the transfer of the $15,000. Since appellant has not proven that he advanced the money with the expectation of making a profit, the loss is a personal one and respondent correctly disallowed the claimed deduction.

On the basis of the foregoing, the action of respondent must be sustained.

Appeal of Jesse A. Jones

O R D E R

Pursuant to the views expressed in the opinion of the board.on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Jesse A. Jones against a proposed assessment of additional personal income tax in the amount of $1,650.24 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

, Member

, Member